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Report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994

Security Council
Fifty-sixth year

Identical letters dated 14 September 2001 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council

I am attaching for your consideration and for the consideration of the members of the General Assembly and of the Security Council a letter, dated 9 July 2001, from the President of the International Criminal Tribunal for Rwanda, Judge Navanethem Pillay (see annex).

In the report which is attached to her letter, President Pillay reviews the current situation regarding the conduct of trials before the International Criminal Tribunal for Rwanda. On the basis of experience gained in the conduct of trials to date and in the light of information supplied by the Prosecutor regarding her investigations programme and probable future indictments, President Pillay projects how the Tribunal's activities are likely to evolve in the future, both in the medium and the longer term. On the basis of this assessment, she concludes that, should it maintain its current structure, the Tribunal is likely to require a considerable period of time to complete the trials of all of those persons who are currently being, and who it can be anticipated will in the future be, prosecuted before it.

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President Pillay, on behalf of the judges of the International Criminal Tribunal for Rwanda, proposes that, to address this situation, a pool of ad litem judges should be established in the Tribunal. The Tribunal might then draw upon that pool, as and when need be, in order to put together additional teams of judges to hear cases that have been made ready for trial and to dispose of motions that have been submitted in other cases during their pre-trial phase.

You will recall that, in my letter dated 7 September 2000 (A/55/382), I drew to your attention and to the attention of the members of the General Assembly and of the Security Council, a letter, dated 12 May 2000, from Judge Claude Jorda, President of the International Tribunal for the Former Yugoslavia. In the report that was attached to his letter, President Jorda proposed, inter alia, a measure broadly similar to that which is being proposed by President Pillay.

You will also remember that, by its resolution 1329 (2000) of 30 November 2000, the Security Council proceeded to amend the Statute of the International Tribunal for the Former Yugoslavia in order to establish a pool of ad litem judges in that Tribunal.

I should note in this connection that the measure that is being proposed by President Pillay differs in certain respects from that which was adopted by the Security Council in respect of the International Tribunal for the Former Yugoslavia.

First, it is proposed that the pool of ad litem judges that would be created in the International Criminal Tribunal for Rwanda should consist of 18 ad litem judges, as compared with 27 in the case of the International Tribunal for the Former Yugoslavia.

Secondly, it is proposed that, during such period as they might be appointed to serve in the Tribunal, ad litem judges of the International Criminal Tribunal for Rwanda should be competent to adjudicate not only in trials, but also in pre-trial proceedings.

Thirdly, it is proposed that, in the case of the International Criminal Tribunal for Rwanda, it should be possible for cases to be heard by a bench that is composed of ad litem judges alone and that does not include any of the permanent judges of the Tribunal.

Adoption of the measure which President Pillay has proposed would require the amendment by the Security Council of the Statute of the International Criminal Tribunal for Rwanda. The amendments which the judges of the Tribunal would propose to this end are set out in chapter II of the report that is attached to President Pillay's letter.

In the event that the Security Council adopted this measure, the General Assembly would subsequently be requested to approve the related increases that would be required in the budget of the Tribunal.

Finally, and depending upon the manner in which the Security Council might decide to give effect to the measure proposed, it might be necessary for the Security Council and the General Assembly to proceed to elect additional judges to the International Criminal Tribunal for Rwanda.

The preliminary estimated cost of adopting the proposal of the President of the International Criminal Tribunal for Rwanda for nine ad litem judges in the biennium 2002-2003 would be approximately US$ 23.6 million.

I would be grateful if you would bring the present letter and its attachments to the attention of the members of the General Assembly and of the Security Council.

(*Signed*) Kofi A. **Annan**

Annex

Letter dated 9 July 2001 from the President of the International Criminal Tribunal for Rwanda addressed to the Secretary-General

On behalf of the judges of the International Criminal Tribunal for Rwanda, I am pleased to forward to you herewith the request for ad litem judges, to enable the timely completion of the mandate of the Tribunal (see attachment).

I kindly request you to submit this proposal to the Security Council and to the General Assembly as soon as possible and practicable, pursuant to Security Council resolutions 955 (1994), 1165 (1998) and 1329 (2000).

(*Signed*) Navanethem **Pillay**
President

Appendix

Request from the International Criminal Tribunal for Rwanda for ad litem judges

The International Criminal Tribunal for Rwanda respectfully requests the Security Council to amend the Statute of the Tribunal in order to create a pool of ad litem judges. The purpose of the request is to ensure the timely completion of the Tribunal's mandate.

The present document is divided into two chapters:

- Chapter I gives an overview of the present and future workload of the Tribunal. It provides motivation for the amendments of the Statute of the Tribunal for ad litem judges and explains how this system would be expected to function at the Tribunal.
- Chapter II contains proposed draft amendments to the Statute of the Tribunal.

Supporting statistics are presented in the annex.

Summary

Since the first trial started in 1997, the Trial Chambers of the International Criminal Tribunal for Rwanda (ICTR) have rendered eight judgements in respect of nine accused. Six trials involving a total of 15 accused are in progress. Consequently, 24 of the 48 persons presently detained have either received judgement or are in trial. With the available resources, the Trial Chambers cannot complete their roll of present cases before 2006-2007, the end of the Tribunal's third mandate.

The Prosecutor has recently communicated her future investigation programme to the President of the Tribunal. This makes it possible to project the possible completion of trials. The Prosecutor intends to indict up to 136 new accused by 2005. This may lead to approximately 45 new trials with 3 accused per trial. Depending on the arrest rate, ICTR will be able to complete all trials in the first instance by 2015 (assuming an arrest rate of 50 per cent), 2019 (if the rate is 75 per cent) or 2023 (if it is 100 per cent) with the present resources. Such time frames are not acceptable. The estimates are similar to those made by the International Tribunal for the Former Yugoslavia (ICTY) in connection with its request for ad litem judges, but the number of present and possible future accused at ICTR is higher.

The present draft amendments of the ICTR Statute in respect of ad litem judges largely follow the solution adopted by the Security Council in its resolution 1329 (2000) for ICTY. However, it is proposed that the ad litem judges shall also be empowered to adjudicate in pre-trial proceedings and that a Trial Chamber section may be composed of ad litem judges only. This is important to avoid delays.

The reform, if implemented in full by the end of 2002, would enable ICTR to complete all cases against the present detainees approximately by the end of 2004. The completion of the trials against the new 136 accused would depend on the arrest rate: 2008 (50 per cent), 2009 (75 per cent) and 2011 (100 per cent).

The creation of a pool of ad litem judges is a more cost-effective solution than continuing with only three Trial Chambers beyond the decade. In order to save costs, the judges envisage that the Chambers will work in shifts.

I. Motivation for ad litem Judges at the International Criminal Tribunal for Rwanda

A. Introduction

1. The Tribunal is in the middle of its second four-year period. The mandate of the present judges expires on 24 May 2003. As of the end of June 2001, there are 48 accused in detention. Judgement has been rendered in respect of nine accused since the first trial started in January 1997. Each of the three Trial Chambers of ICTR is now conducting two or more trials simultaneously ("twin-" or "multi-tracking"). Currently, six trials concerning 15 accused are in progress. In February 2001, the Prosecutor communicated to the President her future investigation programme, which may include up to 136 new suspects by 2005.

2. On the basis of the experience acquired so far and the Prosecutor's plan to indict 136 suspects, it is possible to project the possible dates for completion of trials both with available and with enhanced resources. The establishment of a pool of ad litem judges would significantly reduce the length of time and will be a cost-effective solution.

3. ICTR was set up by the Security Council in its resolution 955 (1994) in the year following the establishment of the International Tribunal for the Former Yugoslavia.[1] By its resolutions 1165 (1998) and 1166 (1998), the Security Council decided that each of the two Tribunals should have a third Trial Chamber. By its resolution 1329 (2000), the Security Council amended the Statutes of ICTR and ICTY in order to increase the number of the judges of the Appeals Chambers of the two Tribunals from five to seven. It also amended the Statute of ICTY in order to establish a pool of 27 ad litem judges. This amendment was based on a request from the ICTY.[2] On 12 June 2001, the General Assembly elected 27 ad litem judges for ICTY.

4. As is apparent from the statistics set out below, the workload of ICTR is extremely heavy. The process of international criminal justice is not the same as proceedings at the national level and is clearly more complex and protracted. With existing resources, each of the three Trial Chambers can only complete a limited number of cases. ICTR is an ad hoc Tribunal and it is essential that its task be completed within a reasonable time. This is important in order to respect the rights of the accused and to meet the expectations of the victims, Rwandan society and the United Nations.

5. The need for ad litem judges at ICTR is basically the same as that at ICTY. The present request follows in the main the solution authorized for ICTY by the Security Council in its resolution 1329 (2000). In particular, Chambers shall at any one time be composed of a maximum of nine ad litem judges. However, the present request differs in some material respects to accommodate the specific circumstances at ICTR. These are specified below (paras. 26-28).

B. Present and future workload

6. Since the first trial started in January 1997, the Trial Chambers of the Tribunal have rendered eight judgements against nine accused. Eight accused have been convicted after full trials (Akayesu, Rutaganda, Ruzindana and Kayishema, Musema) or upon pleas of guilty (Kambanda, Serushago, Ruggiu). One accused has been acquitted (Bagilishema). Another accused was released upon the withdrawal of the indictment by the Prosecutor (Ntuyahaga, presently detained by the Tanzanian authorities). Seven convicted persons lodged appeals, five of which have been determined by the Appeals Chamber (Kambanda, Serushago, Akayesu, Ruzindana and Kayishema). Two appeals are pending (Rutaganda and Musema).

7. In addition to the judgements mentioned above, the Chambers have rendered more than 500 decisions on motions brought by the parties. Most of the decisions relate to the pre-trial stage (paras. 16-17 below).

8. Of the 48 accused in detention, 24 have either received judgement or are in ongoing trials; 24 accused are still at the pre-trial stage. When a new trial starts in September 2001, 17 accused will be at the trial stage and 22 of the present accused will have cases at the pre-trial stage. It is important to note that several of the ongoing trials are joint trials against more than one accused and will take a longer time to complete

[1] Security Council resolution 827 (1993).
[2] A/55/382-S/2000/865, annex I (hereinafter the ICTY report).

because of the number of the accused in each case, the number of witnesses to be called or the volume of disclosed documents. Consequently, some time may elapse before all three Trial Chambers will be available for further trials.

9. The situation can be summarized as follows: since 23 October 2000, **Trial Chamber I** has been hearing the *Media* trial against three accused (Nahimana, Ngeze and Barayagwiza). By the end of June 2001, 25 witnesses had testified from a list of approximately 70 potential prosecution witnesses. The *Media* trial has been conducted in parallel with the preparations of the judgement in the *Bagilishema* case (judgement of 7 June 2001). A trial involving two accused (E. and G. Ntakirutimana) will commence on 17 September 2001. It will be twin-tracked with the *Media* trial. The *Media* trial is expected to take the greater part of 2002.

10. **Trial Chamber II** is hearing three trials on a multi-track basis. The trial against Kajelijeli commenced on 12 March 2001 and the trial of Kamuhanda started on 17 April 2001. For reasons beyond the Chamber's control, progress has so far been limited and only one and two witnesses have testified in these two cases, respectively. Following the death of the presiding judge and the new composition of the Chamber, these two cases have to resume or start de novo. The *Butare* trial commenced on 11 June 2001. It includes six accused (Kanyabashi, Nyiramasuhuko, Ntahobali, Nsabimana, Nteziryayo and Ndayambaje).

11. Trial Chamber II has also been assigned three other cases. *Government* trial I includes four accused (Bizimungu (February 1997), Mugenzi (April 1999), Mugiraneza (April 1999) and Bicamumpaka (April 1999)).[3] *Government* trial II relates to seven accused (Karemera, (June 1998), Rwamakuba (October 1998), Ngirumpatse (June 1998), Nzirorera (June 1998) and three others still at large). The *Niyitegeka* case is against one accused (February 1999). The commencement of trial in these three cases will depend on the progress in ongoing trials in this Chamber.

12. **Trial Chamber III** is presently hearing two trials on a twin-track basis. The *Cyangugu* trial against three accused (Ntagerura, Bagambiki and Imanishimwe) commenced on 18 September 2000. In that trial 37 prosecution witnesses have been heard over 62 hearing days and 10 prosecution witnesses remain to be called. The trial against another accused (Semanza) started on 16 October 2000. So far, 24 witnesses have been heard during 29 days in court and 1 witness is to be cross-examined before the Prosecutor's case is closed.

13. Trial Chamber III has also been assigned the *Military* case against four accused (Bagosora (March 1996), Nsengiyumva (March 1996), Kabiligi (July 1997) and Ntabakuze (July 1997)). It is expected to start in the first quarter of 2002.

14. In addition, there are cases against persons who have been detained subsequently: Muhimana (November 1999), Muvunyi (February 2000), Ndindiliyimana (January 2000), Nzuwonemeye (February 2000), Sagahutu (February 2000), Musabyimana (April 2001), Nshamihigo (May 2001), Gacumbitsi (June 2001) and Mpambara (June 2001). Moreover, a number of other suspects, against whom indictments have been prepared, are at large.

15. Apart from the accused referred to above, the Prosecutor, in February 2001, prepared her intended investigative programme up to the year 2005, by which date she expects to have completed her investigations. The Prosecutor's present estimate is that indictments will number as follows: in 2001-29; 2002-30; 2003-30; 2004-30; and 2005-17. Although these figures are estimates, they imply that the Tribunal may be faced with a maximum of 136 new accused, requiring approximately 45 new trials.

C. Analysis of the situation

16. At the beginning of the present four-year period (June 1999), a considerable number of pre-trial motions was pending. At that stage, there was also a shift in the Prosecutor's strategy. Originally, she had attempted to join a large number of accused (over 20) in one case, but her application was not successful on procedural grounds. Thereafter, the Prosecutor opted for joinder of a limited number of accused in cases that presented similar issues, such as the use of broadcast and print media, military officials, government officials, certain geographical areas (Butare,

[3] The dates within parentheses indicate when detainees whose trials have not commenced were first received into the custody of the Tribunal.

Cyangugu), etc. This change of strategy led to a considerable number of motions from the prosecution in order to obtain amendments and joinders of indictments. In addition, a large number of opposing and other motions was filed by the defence.

17. Consequently, the first priority for the Chambers at the beginning of the second four-year period was to reduce the number of motions in order to move to the trial stage. In order to facilitate this task, the judges modified the Rules of Procedure and Evidence to allow for motions to be considered on briefs, without oral hearings, and by a single judge. In a short-term perspective, this led to a reduction of actual days in court, but it increased the efficiency of the Chambers and reduced costs in connection with oral hearings of motions. After having reduced the number of pending motions to a minimum, some time was needed to ensure full disclosure of documents to be used in trials and their translation before all three Trial Chambers could proceed to trial.

18. The three Trial Chambers conduct trials on a twin- or multi-track basis. This will lead to judgements in respect of a significant number of persons during the present mandate. It is important to recall, however, that conducting judicial proceedings at the international level is a far more complicated task than ensuring progress of trials at the national level. There are many reasons for this, such as the legal and factual complexity of the cases, the volume of documents subject to disclosure and translation, the large number of witnesses, interpretation of testimonies from Kinyarwanda into French and English, ongoing investigations by the prosecution and the defence, the availability of witnesses and the schedules of lawyers who come from distant places. Moreover, in cases with voluminous files, both parties regularly request more time for preparation. In such situations, the Chamber has to balance the need to ensure a fair trial against avoiding unnecessary delay.

19. One concrete example may illustrate why the trials are time-consuming. Most witnesses testify in Kinyarwanda. Their testimony is interpreted into French and then into English, and vice versa. This implies that the time needed for examination of witnesses is almost tripled as compared with cases at the national level. Problems of communication during the testimony, including cultural and linguistic differences, also require time. Furthermore, considerable time is needed for the reproduction and translation of voluminous case files, which include thousands of pages from documents, books, journals, photographs, maps and audio- and videocassettes.

20. A further analysis of the cases pending before the Tribunal reveals that they vary in many respects. Some trials may be finalized within a few months — where, for instance, the defence is willing to make admissions to narrow the disputed issues. Other trials, in particular those against several accused, may require more than a year for the parties to present their evidence. Again, a useful example is the examination of witnesses. After the examination-in-chief of a prosecution witness, one defence lawyer for each of the accused usually conducts cross-examination, followed by re-examination by the prosecution. Therefore, the testimony of one witness may take several days. Even with careful planning and active intervention by the judges, trials with a large number of witnesses are necessarily protracted.

21. All three branches of the Tribunal (Chambers, Office of the Prosecutor, Registry) are anxious to avoid unnecessary delays. Several measures have been taken to speed up the proceedings and others are under way. The Tribunal is now in the process of exhausting all available resources to expedite the proceedings and to shorten the duration of trials. In spite of increased efficiency and multi-tracking, there are limits to what can be achieved by the existing three Trial Chambers. It is simply not possible to complete all cases against the present 48 accused by the end of May 2003. The trials that have not yet commenced against the present detainees cannot, with the resources presently available, be brought to an end earlier than 2006-2007. The number of future accused indicated by the Prosecutor (136) may prolong the activities of ICTR until between 2015 to 2023, depending on the percentage of accused that will be arrested, if the present level of resources is maintained (see the attachment, paras. 28-34, for supporting statistics).

22. Further delays must be avoided for several important reasons. Some of the accused have already been in detention for several years. It follows from international human rights standards that everyone is presumed innocent unless found guilty and that trials shall be conducted without undue delay. Moreover, with the passage of time, the assessment of evidence from 1994 becomes increasingly complicated. Furthermore, an acceleration of the process is needed not only to achieve justice, but also to contribute to

reconciliation within Rwanda, which was one of the aims when the Tribunal was set up.

D. Suggested solution

23. Following extensive discussions, the judges of the Tribunal are convinced that the only viable option is to introduce a pool of ad litem judges in ICTR. Such a solution would mean that the trials against most, if not all, of the present detainees could begin in 2002. This would, in turn, enable ICTR to complete the cases against all the present detainees by 2004 and to bring future cases to finality by 2008-2011, depending on the arrest rate. Statistics supporting these estimates are presented in the attachment (paras. 35-37).

24. It is worth noting that these estimates are similar to the predictions of ICTY in its request for ad litem judges. To the extent that ICTY considers that its task may be completed earlier than ICTR, it is important to note, first, that ICTR has arrested a higher number of accused persons than ICTY. Secondly, the Prosecutor's investigation programme in relation to ICTR includes a higher number of suspects than the figures indicated by her in relation to ICTY. It is also important to recall that all the detainees in Arusha are alleged to have been leaders during the events in Rwanda in 1994. Such cases are more complicated, legally and factually, than trials against accused at a lower level of alleged involvement.

25. Chapter II contains suggested amendments to the Statute of ICTR. The draft mainly follows the model adopted by the Security Council in annex I to its resolution 1329 (2000) in respect of ICTY. In particular, Chambers at the ICTR would at any one time be composed so as to include a maximum of nine ad litem judges. Moreover, the suggested provisions regarding the election, appointment and status of these judges are identical to the equivalent provisions in annex I to that resolution.

26. However, in order to respond to the specific requirements of ICTR, the draft differs in three respects from the solution chosen for ICTY. First, it is proposed that the pool of ad litem judges shall be composed of 18, not 27 such judges. In the particular context of ICTR, 18 such judges is considered reasonable and sufficient.

27. Second, article 13 quater (2) (b) (iv) of the ICTY Statute precludes ad litem judges from adjudicating in pre-trial proceedings. This may be because of the fact that the ICTY judges will delegate some of the functions at the pre-trial stage to their senior legal officers.[4] The situation at ICTR is different. Our experience indicates that pre-trial activities, including judicial administrative decisions, require the involvement of a judge to ensure the full cooperation of the parties. Moreover, pre-trial motions comprise important and complex legal issues. As mentioned above (paras. 16-17), such motions represent a heavy workload that has caused delays at the pre-trial stage. At ICTR, there is no reason why ad litem judges should not be assigned such motions. Consequently, draft article 12 quater (2) (b), as proposed for the ICTR Statute, does not contain any provision that would exclude ad litem judges from adjudicating in pre-trial proceedings.

28. The third difference relates to the composition of the new sections to be set up within Chambers. According to article 12 (2) of the ICTY Statute, each Trial Chamber to which ad litem judges are assigned may be divided into "sections" of three judges each "composed of both permanent and ad litem judges". In the specific context of ICTR, this is not a workable solution. It follows from the information given above that several of the ongoing trials before the Trial Chambers will be lengthy. Most of the permanent judges may be engaged in trials for a considerable period. Valuable time would be lost if ad litem judges had to wait until a permanent judge became available to sit with them. There are no principled reasons why ad litem judges should not adjudicate trials on their own. They would be elected by the Security Council according to the same criteria as the permanent judges. The ad litem judges would be equally qualified and some of them might well be former judges of ICTR or ICTY. Finally, it is recalled that there are only nine permanent judges in Arusha, whereas a larger number of permanent judges are available on a rotating basis in The Hague because the Appeals Chamber has its base of operation there. It is therefore easier for ICTY to have permanent judges in all sections. In order to ensure maximum efficiency, the ICTR Statute should allow flexibility for the President, where circumstances warrant, to decide that a section of a Chamber may be composed of ad litem judges only.

[4] ICTY report, paras. 96-105.

29. The intention of the reform is that the ad litem judges would participate in both pre-trial and trial proceedings as soon as they were elected. The number of judges at any one time would enable the three Chambers to conduct trials in the form of six benches, each composed of three judges. The ad litem judges would be substitutes if any of the permanent judges were unable to continue in a partially heard case for reasons of health or other reasons. They might also be alternate judges if there were a risk that any of the judges might fall ill during the trial. Recent experience has shown that ICTR is vulnerable in relation to absence for reasons of health. It is recalled that the medical facilities in Arusha are limited.

E. Budgetary implications

30. ICTR will provide further information about the budgetary implications of ad litem judges, if needed when the Security Council has decided on the present request. However, the Tribunal is anxious to ensure that a cost-effective solution is found. During their discussions, the judges have decided that the Chambers would work in shifts. The exact manner in which the shift system would operate would depend on the progress of the respective trials and the availability of the parties. Detailed arrangements would have to be worked out by the President in cooperation with the presiding judges of each of the three Chambers. It is envisaged that the Chambers might also sit on Saturdays, or in two shifts every day, for instance from 9 a.m. to 12 p.m. and from 3 to 8 p.m.. This would reduce the need to construct new courtrooms. The judges would also share their secretaries with the ad litem judges in order to reduce costs.

31. To the extent that the ad litem system would require additional financial resources, it should be borne in mind that it is a more cost-effective solution than continuing with only three Chambers until the end of the decade and beyond.

II. Proposed amendments to the Statuteof the International Criminal Tribunal for Rwanda[5]

Article 11
Composition of the Chambers

1. The Chambers shall be composed of sixteen **permanent** independent judges, no two of whom may be nationals of the same State, **and a maximum at any one time of nine ad litem independent judges appointed in accordance with article 12 ter, paragraph 2, of the Statute, no two of whom may be nationals of the same State**.

2. **Three permanent judges and a maximum at any one time of six ad litem judges shall be members of each Trial Chamber. Each Trial Chamber to which ad litem judges are assigned may be divided into sections of three judges each. A section of a Trial Chamber shall have the same powers and responsibilities as a Trial Chamber under the Statute and shall render judgement in accordance with the same rules.**

3. Seven **of the permanent** judges shall be members of the Appeals Chamber. The Appeals Chamber shall, for each appeal, be composed of five of its members.

Article 12
Qualifications of judges

The **permanent and ad litem** judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices. In the overall composition of the Chambers **and sections of the Trial Chambers**, due account shall be taken of the experience of the judges in criminal law, international law, including international humanitarian law and human rights law.

[5] The proposed amendments are in bold-face type (in addition to the titles of the articles).

Article 12 bis
Election of permanent judges[6]

1. Eleven of the **permanent** judges of the International Criminal Tribunal for Rwanda shall be elected by the General Assembly from a list submitted by the Security Council, in the following manner:

(a) The Secretary-General shall invite nominations for judges from States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters;

(b) Within sixty days of the date of the invitation of the Secretary-General, each State may nominate up to two candidates meeting the qualifications set out *in article 12 of the Statute*, no two of whom shall be of the same nationality and neither of whom shall be of the same nationality as any judge who is a member of the Appeals Chamber and who was elected or appointed a permanent judge of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (hereinafter referred to as "the International Tribunal for the Former Yugoslavia") in accordance with article 13 bis of the Statute of that Tribunal;

(c) The Secretary-General shall forward the nominations received to the Security Council. From the nominations received the Security Council shall establish a list of not less than twenty-two and not more than thirty-three candidates, taking due account of the adequate representation on the International Criminal Tribunal for Rwanda of the principal legal systems of the world;

(d) The President of the Security Council shall transmit the list of candidates to the President of the General Assembly. From that list the General Assembly shall elect eleven **permanent** judges of the International Criminal Tribunal for Rwanda. The candidates who receive an absolute majority of the votes of the States Members of the United Nations and of the non-member States maintaining permanent observer missions at United Nations Headquarters shall be declared elected. Should two candidates of the same nationality obtain the required majority vote, the one who received the higher number of votes shall be considered elected.

2. In the event of a vacancy in the Chambers among the **permanent** judges elected or appointed in accordance with this article, after consultation with the Presidents of the Security Council and of the General Assembly, the Secretary-General shall appoint a person meeting the qualifications of **article 12 of the Statute**, for the remainder of the term of office concerned.

3. The **permanent** judges elected in accordance with this article shall be elected for a term of four years. The terms and conditions of service shall be those of the judges of the International Tribunal for the Former Yugoslavia. They shall be eligible for re-election.

Article 12 ter
Election and appointment of ad litem judges

1. The ad litem judges of the International Criminal Tribunal for Rwanda shall be elected by the General Assembly from a list submitted by the Security Council, in the following manner:

(a) The Secretary-General shall invite nominations for ad litem judges from States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters;

(b) Within sixty days of the date of the invitation of the Secretary-General, each State may nominate up to four candidates meeting the qualifications set out in article 12 of the Statute, taking into account the importance of a fair representation of female and male candidates;

(c) The Secretary-General shall forward the nominations received to the Security Council. From the nominations received the Security Council shall establish a list of not less than thirty-six candidates, taking due account of the adequate representation of the principal legal systems of the world and bearing in mind the

[6] The paragraphs contained in this provision are presently in article 12 (2) to (4) of the ICTR Statute.

importance of equitable geographical distribution;

(d) The President of the Security Council shall transmit the list of candidates to the President of the General Assembly. From that list the General Assembly shall elect the eighteen ad litem judges of the International Criminal Tribunal for Rwanda. The candidates who receive an absolute majority of the votes of the States Members of the United Nations and of the non-member States maintaining permanent observer missions at United Nations Headquarters shall be declared elected;

(e) The ad litem judges shall be elected for a term of four years. They shall not be eligible for re-election.

2. During their term, ad litem judges will be appointed by the Secretary-General, upon request of the President of the International Criminal Tribunal for Rwanda, to serve in the Trial Chambers for one or more trials, for a cumulative period of up to, but not including, three years. When requesting the appointment of any particular ad litem judge, the President of the International Criminal Tribunal for Rwanda shall bear in mind the criteria set out in article 12 of the Statute regarding the composition of the Chambers and sections of the Trial Chambers, the considerations set out in paragraphs 1 (b) and (c) above and the number of votes the ad litem judge received in the General Assembly.

Article 12 quater
Status of ad litem judges

1. During the period in which they are appointed to serve in the International Criminal Tribunal for Rwanda, ad litem judges shall:

(a) Benefit from the same terms and conditions of service, mutatis mutandis, as the permanent judges of the International Criminal Tribunal for Rwanda;

(b) Enjoy, subject to paragraph 2 below, the same powers as the permanent judges of the International Criminal Tribunal for Rwanda;

(c) Enjoy the privileges and immunities, exemptions and facilities of a judge of the International Criminal Tribunal for Rwanda.

2. During the period in which they are appointed to serve in the International Criminal Tribunal for Rwanda, ad litem judges shall not:

(a) Be eligible for election as, or to vote in the election of, the President of the Tribunal or the Presiding Judge of a Trial Chamber pursuant to article 13 of the Statute;

(b) Have power:

(i) To adopt rules of procedure and evidence pursuant to article 14 of the Statute. They shall, however, be consulted before the adoption of those rules;

(ii) To review an indictment pursuant to article 18 of the Statute;

(iii) To consult with the President in relation to the assignment of judges pursuant to article 13 of the Statute or in relation to a pardon or commutation of sentence pursuant to article 27 of the Statute.

Article 13
Officers and members of the Chambers

1. The **permanent** judges of the International Criminal Tribunal for Rwanda shall elect a President **from among their number**.

2. The President of the International Criminal Tribunal for Rwanda shall be a member of one of its Trial Chambers.

3. After consultation with the **permanent** judges of the International Criminal Tribunal for Rwanda, the President shall assign two of the **permanent** judges elected or appointed in accordance with article 12 **bis** of the present Statute to be members of the Appeals Chamber of the International Tribunal for the Former Yugoslavia and eight to the Trial Chambers of the International Criminal Tribunal for Rwanda. A judge shall serve only in the Chamber to which he or she was assigned.

4. The members of the Appeals Chamber of the International Tribunal for the Former Yugoslavia shall also serve as the members of the Appeals Chamber of the International Criminal Tribunal for Rwanda.

5. After consultation with the permanent judges of the International Criminal Tribunal for Rwanda, the President may assign such ad litem judges as may from time to time be necessary to serve in the International Criminal Tribunal for Rwanda to the Trial Chambers.

6. The **permanent** judges of each Trial Chamber shall elect a Presiding Judge **from among their number**, who shall **oversee the work** of that Trial Chamber as a whole.

7. If a case is heard by ad litem judges only, the Presiding Judge shall be appointed by the President of the Tribunal after consultations with the permanent judges.

Attachment

Supporting Statistics

A. Introduction

1. In its report of November 1999, the Expert Group to Conduct a Review of the Effective Operation and Functioning of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda emphasized the need to anticipate a heavy workload of ICTR's Trial Chambers. The Group stated that if "investigations in Rwanda yield a considerable number of new indictees; and if everything else remains as at present, without increasing budgetary resources, mainly more judges, it will be extremely difficult, if not impossible, to assure that the Tribunals will be able to accomplish satisfactorily the missions confided to them by the Security Council".[1] Since the date of that report, several further accused have been transferred to ICTR. Moreover, the Prosecutor has announced her intention of pursuing a future caseload involving 136 accused persons.

2. The Tribunal has taken such measures as are within its power to improve its procedures through amendments to the Rules of Procedure and Evidence. It has also adopted measures to improve its internal organization, including its court management. These improvements have resulted in a significant increase in the Tribunal's efficiency in meeting its heavy workload. However, there are inherent limits as to how much the three Trial Chambers may achieve under the present system.

3. The purpose of the present analysis is:

(a) To outline in more detail than in the chapter of the main body of the report the current operations of the Tribunal;

(b) To assess the current judicial resources required for the Tribunal to accomplish its mandate;

(c) To project how the activity of the Tribunal may develop in the foreseeable future and how that activity will affect the length of its mandate;

(d) On the basis of information now available, to propose measures that will enable the Tribunal to increase its operational efficiency and shorten the time it needs to discharge its mandate.

B. Present workload of the Tribunal; statistics and observations

4. The operations of the Tribunal at present demonstrate the following characteristics:

(a) A heavy workload of ongoing cases, whether in the phase of pre-trial preparations or in trial proceedings;

(b) An increasing number of cases that will be ready for trial in the near future;

[1] A/54/634 and S/2000/597, annex I. See para. 108 of the report and recommendation 21.

(c) An increasing number of anticipated indictments and arrests;

(d) An increasing number of joint trials raising very complicated legal and factual questions.

5. To facilitate an analysis of the Tribunal's current workload, the cases discussed below are grouped in the following four categories, based on their trial status:

(a) Completed trials;

(b) Ongoing trials;

(c) Ongoing pre-trial preparations;

(d) Future cases.

6. For analytical purposes, the category "completed trials" refers to cases in which judgement has been rendered by a Trial Chamber, whether or not an appeal is pending. The category "ongoing trials" includes cases in which the presentation of evidence has already started during trials in the Chambers. "Ongoing pre-trial preparations" refers to cases at varying stages of pre-trial proceedings. "Future cases" are upcoming cases as recently announced by the Prosecutor as part of her programme of future investigations.[2]

7. The analysis of the current trial capacity of the Trial Chambers is based on information concerning the completed and ongoing cases. The following information has been taken into account:

(a) Dates of confirmation of the indictment and of the initial appearance of the accused;

(b) Number of decisions rendered on pre-trial motions;

(c) Length of pre-trial preparations, from the initial appearance of the accused to the opening day of trial;

(d) Trial length, from opening day of trial to delivery of the judgement;

(e) Current status, including a decision on appeal, if any, by the Appeals Chamber.

8. It should be noted that item (d) above includes both the total period spent during proceedings in court and the stage of judgement writing once both parties have closed their case. Even if these two stages are quite separate and present different problems, it is not necessary to distinguish between them for the purposes of the present document.[3]

[2] In the present context, the group of future cases consists of two categories: first, cases where the indictment has been confirmed but the accused has yet to be arrested; and second, cases in which the investigation is still in process, i.e., where the suspects have been identified — whether their whereabouts are known or they still have to be traced — and indictments are anticipated, but the dates of their submission cannot be predicted.

[3] The same approach was adopted in the ICTY report, chap. I.A, table 1.

Table 1
Completed trials as of 30 June 2001

Case	*Indictment confirmed*	*Initial appearance*	*Decisions on pre-trial motions*	*Trial began*	*Length of pre-trial preparations*	*Total trial length until judgement*	*Current status*
Obed Ruzindana (ICTR-95-1A) – joint trial	28 November 1995	29 October 1996	16	11 April 1997	5 months	2 years and 1 month	21 May 1999: 25 years imprisonment. Confirmed by Appeals Chamber 1 June 2001
Clement Kayishema (ICTR-95-1A) – joint trial	28 November 1995	31 May 1996	9	11 April 1997	10 months	2 years and 1 month	21 May 1999: Life imprisonment. Confirmed by Appeals Chamber 1 June 2001
Georges Anderson N. Rutaganda (ICTR-96-3A)	16 February 1996	30 May 1996	15	18 March 1997	9.5 months	2 years and 9 months	6 December 1999: Life imprisonment. Appeal pending
Jean Paul Akayesu (ICTR-96-4A)	16 February 1996	30 May 1996	16	14 January 1997	7.5 months	1 year and 10 months	12 October 1998: Life imprisonment. Confirmed by Appeals Chamber 1 June 2001
Alfred Musema (ICTR-96-13A)	15 July 1996	18 November 1997	7	25 January 1999	1 year and 3 months	1 year	27 January 2000: Life imprisonment. Appeal pending
Jean Kambanda (ICTR-97-23)	16 October 1997	1 May 1998: Pleaded guilty	..	1 May 1998	N/A	4 months	4 September 1998: Life imprisonment. Confirmed by Appeals Chamber 19 October 2000
Georges Ruggiu (ICTR-97-32)	9 October 1997	24 October 1997: Pleaded guilty	6	15 May 2000: Pleaded guilty	2 years and 6 months	2 weeks	1 June 2000: 12 years in prison. No appeal
Omar Serushago (ICTR-98-39)	29 September 1998	14 December 1998: Pleaded guilty to four of five counts	3	14 December 1998. Pleaded guilty	2.5 months	1.5 months	5 February 1999: 15 years imprisonment. Confirmed by Appeals Chamber 14 February 2000
Bernard Ntuyahaga (ICTR-98-40)	29 September 1998	13 November 1998	4	18 March 1999. Indictment withdrawn by leave of Trial Chamber after hearing	N/A	N/A	Appeal to Appeal Chamber rejected

Case	*Indictment confirmed*	*Initial appearance*	*Decisions on pre-trial motions*	*Trial began*	*Length of pre-trial preparations*	*Total trial length until judgement*	*Current status*
Ignace Bagilishema (ICTR-95-1A-T)	28 November 1995	1 April 1999 and 18 September 1999	2	28 October 1999	7 months	1 year and 6 months	7 June 2001: Acquitted of all charges

9. Table 1 shows that nine cases against 10 accused had been completed as of 30 June 2001, including eight trials against nine accused. In one trial (*Kayishema/Ruzindana*) two accused were tried together. Moreover, the table includes the *Ntuyahaga* case, where the indictment was withdrawn pursuant to a request by the Prosecutor. In this group of completed cases, the average length of pre-trial preparations was 10 months per accused. The average time spent by the accused in detention on remand (from initial appearance to delivery of judgement) was 2 years and 2 months.

10. The longest case was that of *Rutaganda*: 9.5 months of pre-trial preparations and 2 years and 9 months until judgement. The accused spent in total 3 years and 6.5 months in detention on remand. The number of decisions rendered on pre-trial motions in this case was also among the highest: 15 (only in the *Akayesu* case and in the *Ruzindana* case is this number higher: 16). Apart from the cases where the accused pleaded guilty (*Ruggiu, Kambanda* and *Serushago*), the two most expeditious cases so far are those of *Bagilishema* (2 years and 1 month, of which 7 months were spent on pre-trial preparations and 7 and a half months on judgement writing, the judgement concerned totalling some 450 pages), and *Musema* (2 years and 3 months, of which 1 year and 3 months was spent on pre-trial preparations and 7 months on judgement writing, the judgement in this case totalling 308 pages, in parallel with another judgement). In the *Musema* case there were 39 days in court during the trial proceedings from 25 January to 28 June 1999.

11. The length of each individual case within this group of completed trials was influenced by many factors, in particular the complexity of the case and the number of witnesses. The number of actual days spent in court is, of course, less than the total time for the trial indicated above. Apart from the time required for judgement writing, there are many reasons for this, such as: requests for postponements by both parties in order to prepare for examination-in-chief or cross-examination; unavailability of witnesses or of parties, due, inter alia, to health problems; the Chamber's deliberations on motions during trial; and other factors beyond the control of the Chambers. It is important to bear in mind that cases very seldom proceed according to the estimated schedule set beforehand due to all types of events which affect the length of proceedings and which may even lead to the trial being interrupted.[4]

[4] See similar statement in ICTY report, para. 22.

Table 2
Ongoing trials as of 30 June 2001

Case	*Indictment confirmed*	*Initial appearance*	*Decisions on pre-trial motions*	*Length of pre-trial preparations*	*Trial began*	*Trial length*	*Current status*
Hassan Ngeze (ICTR-97-27-T/ ICTR-99-52-T)	3 October 1997 and 26 November 1999	19 November 1997	16	2 years and 10 months	23 October 2000	Ongoing: 8 months	Joint trial in progress – Trial Chamber I (***Media* trial**)
Ferdinand Nahimana (ICTR-96-11-T/ ICTR-99-52-T)	12 July 1996 and 26 November 1999	19 February 1997	17	3 years and 8 months	23 October 2000	Ongoing: 8 months	Joint trial in progress – Trial Chamber I (***Media* trial**)
Jean-Bosco Barayagwiza (ICTR-97-19-T/ ICTR-99-52-T)	23 October 1997 and 18 April 2000	23 February 1998	24	2 years and 8 months	23 October 2000	Ongoing: 8 months	Joint trial in progress – Trial Chamber I (***Media* trial**)
Juvenal Kajelijeli (ICTR-98-44-T)	29 August 1998	19 April 1999	11	1 year and 10 months	13 March 2001	Ongoing: 4 months	Single trial in progress – Trial Chamber II
Jean de Dieu Kamuhanda (ICTR-99-54-I/ ICTR-00-57-I)	1 October 1999	10 and 24 March 2000	3	1 year and 1 month	17 April 2001	Ongoing: 2.5 months	Single trial in progress – Trial Chamber II
Joseph Kanyabashi (ICTR-96-15-I/ ICTR-98-42-T)	15 July 1996	29 November 1996	8	4 years and 6 months	12 June 2001	Ongoing: 0.5 months	Joint trial in progress – Trial Chamber II (***Butare* trial**)
Pauline Nyiramasuhuko (ICTR-97-21-I/ ICTR-98-42-T)	29 May 1997	3 September 1997	13	3 years and 8 months	12 June 2001	Ongoing: 0.5 months	Joint trial in progress – Trial Chamber II (***Butare* trial**)
Arsene Ntahobali (ICTR-97-21-I/ ICTR-98-42-T)	29 May 1997	17 October 1997	10	3 years and 7 months	12 June 2001	Ongoing: 0.5 months	Joint trial in progress – Trial Chamber II (***Butare* trial**)
Sylvain Nsabimana (ICTR-97-29-I/ ICTR-98-42-T)	16 October 1997	24 October 1997	20	3 years and 6 months	12 June 2001	Ongoing: 0.5 months	Joint trial in progress – Trial Chamber II (***Butare* trial**)
Alphonse Nteziryayo (ICTR-97-29-I/ ICTR-98-42-T)	16 October 1997	17 August 1998	12	2 years and 9 months	12 June 2001	Ongoing: 0.5 months	Joint trial in progress – Trial Chamber II (***Butare* trial**)
Elie Ndayambaje (ICTR-96-8-I/ ICTR-98-42-T)	21 June 1996	29 November 1996	11	4 years and 7 months	12 June 2001	Ongoing: 0.5 months	Joint trial in progress – Trial Chamber II (***Butare* trial**)

Case	*Indictment confirmed*	*Initial appearance*	*Decisions on pre-trial motions*	*Length of pre-trial preparations*	*Trial began*	*Trial length*	*Current status*
Andre Ntagerura (ICTR-96-10A-T)	10 August 1996	20 February 1997	54 (with **Bagambiki** and **Imanishimwe**)	3 years and 7 months	18 September 2000	Ongoing: 9.5 months	Joint trial in progress – Trial Chamber III (***Cyangugu* trial**)
Emmanuel Bagambiki (ICTR-97-36-T)	10 October 1997	19 April 1999	54 (with **Imanishimwe** and **Ntagerura**)	1 year and 5 months	18 September 2000	Ongoing: 9.5 months	Joint trial in progress – Trial Chamber III (***Cyangugu* trial**)
Samuel Imanishimwe (ICTR-97-36-T)	10 October 1997	27 November 1997	54 (with **Bagambiki** and **Ntagerura**)	2 years and 10 months	18 September 2000	Ongoing: 9.5 months	Joint trial in progress – Trial Chamber III (***Cyangugu* trial**)
Laurent Semanza (ICTR-97-20-T)	23 October 1997	16 February 1998	21	2 years and 8 months	16 October 2000	Ongoing: 8.5 months	Single trial in progress – Trial Chamber III

12. Table 2 shows that 15 accused are currently being tried in six cases. There are three joint trials (*Media* case — three accused; *Cyangugu* case — three accused; *Butare* case — six accused) and three single trials (*Semanza, Kamuhanda, Kajelijeli*). The longest pre-trial preparation was in the case of *Nahimana*: 3 years and 8 months; the shortest was that of the *Bagambiki* case: 1 year and 5 months.

13. Following the reduction of the number of motions (see paras. 16-17 of the main document), all Chambers are at the trial stage. Therefore, the number of trial days in the courtroom has increased significantly. As a considerable number of the trials are now conducted jointly against several accused, the "productivity" of the Chambers has increased.

14. In order to organize their work efficiently, the Trial Chambers now hear two or even three trials simultaneously ("twin-tracking" or "triple-tracking"). For example, from October 2000 to June 2001, Trial Chamber I dealt with the *Bagilishema* case in the stage of judgement writing and the *Media* case in the trial phase. In addition, the *Kibuye* trial (two accused) and the *Muhimana* case were in the process of pre-trial preparations. From the middle of September 2001, the Chamber will twin-track the *Media* trial and the *Kibuye* trial (see below).

15. Trial Chamber II has currently on its roll six cases with a total of 20 accused. Three trials have just started: *Kajelijeli, Kamuhanda* and *Butare* (six accused). Due to the death of the Presiding Judge of that Chamber, Judge Kama, in early May 2001 and the consequent recomposition of Trial Chamber II, the *Kajelijeli* case started de novo on 3 July 2001 and the *Kamuhanda* case will resume or start de novo in September 2001. Three cases are in the phase of pre-trial preparations (see below): the *Niyitegeka* case, *Government* trial I (four accused) and *Government* trial II (seven accused).

16. Trial Chamber III is hearing two trials concurrently: the *Cyangugu* case and the *Semanza* trial. One joint trial against four accused is in the phase of pre-trial preparations (see below about the *Military* trial).

17. Among the reasons perceived for the extended length of the proceedings in pending trials are the number of accused being tried together and the complexity of the legal and factual issues being addressed by the Trial Chambers. Trials against several accused are expected to significantly reduce the total number of actual days spent in the courtroom as compared with separate trials against the same accused persons, although it will not necessarily shorten the length of the trial per accused. As a rule, the number of witnesses to be heard and the evidence to be examined in joint trials is much greater than in separate trials and, consequently, the number of actual trial days spent in the courtroom is higher. The organization of joint trials also reduces the need for witnesses to appear in several trials and repeat their testimony.

18. The complexity of cases currently pending is connected, inter alia, with the rank and status of the accused and their alleged roles in planning, inciting and executing the killings in Rwanda in 1994. The trials of accused who are alleged to have occupied positions of leadership can be expected to be legally and factually more complex and therefore to take longer than the trials of persons of lesser alleged involvement.

19. The length of time spent in pre-trial preparations for the group of ongoing trials has generally been longer than in the group of completed cases. The number of decisions rendered on pre-trial motions has also increased. The average total time spent in detention per accused in the group of ongoing trials already exceeds the average total time in detention for the group of completed cases. Bearing in mind that all ongoing trials are in a relatively early phase, the average time spent in detention per accused for this group of cases is expected to be longer than in the previous group.

20. The reasons for an increased length of time spent on pre-trial proceedings may be found in the confluence of several factors, largely outside the control of the Trial Chambers. The most significant factors are:

(a) Advent of joint indictments;

(b) Successive amendments of indictments initiated by the Prosecutor;

(c) Increased number of interlocutory motions submitted by the Defence and Prosecutor;

(d) Increased complexity of legal and factual issues being addressed in the decisions rendered on pre-trial motions;

(e) Complaints of lack of disclosure;

(f) Lack of translation of documents;

(g) General lack of readiness on the part of the Prosecutor to proceed to trial.

Table 3
Pre-trial preparations in progress as of 30 June 2001

Case	*Indictment confirmed*	*Initial appearance*	*Decisions on pre-trial motions*	*Length of pre-trial preparations*	*Trial scheduled*	*Trial length*	*Current status*
Elizaphan Ntakirutimana (ICTR-96-10-I/ ICTR-96-17-I)	7 September 1996	31 March 2000	6	Ongoing: 1 year and 3 months	17 September 2001	..	Pre-trial — Trial Chamber I (***Kibuye* trial**)
Gerard Ntakirutimana (ICTR-96-10-I/ICTR-96-17-I)	7 September 1996	2 December 1996	6	Ongoing: 4 years and 7 months	17 September 2001	..	Pre-trial — Trial Chamber I (***Kibuye* trial**)
Mikael Muhimana (ICTR-95-1B-I)	28 November 1995	24 November 1999	2	Ongoing: 1 year and 8 months	Date not fixed	..	Pre-trial — Trial Chamber I
Eliezer Niyitegeka (ICTR-96-14-I)	15 July 1996	15 April 1999	10	Ongoing: 2 years and 4 months	Date not fixed	..	Pre-trial — Trial Chamber II
Casimir Bizimungu (ICTR-95-45-I/ ICTR-99-50-I)	12 May 1999	3 September 1999	14	Ongoing: 1 year and 9 months	Date not fixed	..	Pre-trial — Trial Chamber II (***Government* trial I**)
Justin Mugenzi (ICTR-99-47-I/ ICTR-99-50-I)	12 May 1999	17 August 1999	16	Ongoing: 1year and 10 months	Date not fixed	..	Pre-trial — Trial Chamber II (***Government* trial I**)
Prosper Mugiraneza (ICTR-99-48-I/ ICTR-99-50-I)	12 May 1999	17 August 1999	2	Ongoing: 1 year and 10 months	Date not fixed	..	Pre-trial — Trial Chamber II (***Government* trial I**)
Jerôme Bicamumpaka (ICTR-99-49-I/ ICTR-99-50-I)	12 May 1999	17 August 1999	27	Ongoing: 1 year and 10 months	Date not fixed	..	Pre-trial — Trial Chamber II (***Government* trial I**)
Edouard Karemera (ICTR-98-44-I)	29 August 1998	7 April 1999	15	Ongoing: 2 years and 2 months	Date not fixed	..	Pre-trial — Trial Chamber II (***Government* trial II**)
André Rwamakuba (ICTR-98-44-I)	29 August 1998	7 April 1999	15	Ongoing: 2 years and 2 months	Date not fixed	..	Pre-trial — Trial Chamber II (***Government* trial II**)
Mathieu Ngirumpatse (ICTR-98-44-I)	29 August 1998	7 April 1999	15	Ongoing: 2 years and 2 months	Date not fixed	..	Pre-trial — Trial Chamber II (***Government* trial II**)
Joseph Nzirorera (ICTR-98-44-I)	29 August 1998	7 April 1999	20	Ongoing: 2 years and 2 months	Date not fixed	..	Pre-trial — Trial Chamber II (***Government* trial II**)
Theoneste Bagosora (ICTR-96-7-I)	10 August 1996	20 February 1997	14	Ongoing: 4 years and 4 months	First quarter of 2002	..	Pre-trial — Trial Chamber III (***Military* trial**)
Anatole Nsengiumva (ICTR-96-12-I)	12 July 1996	19 February 1997	9	Ongoing: 4 years and 4 months	First quarter of 2002	..	Pre-trial — Trial Chamber III (***Military* trial**)

Case	*Indictment confirmed*	*Initial appearance*	*Decisions on pre-trial motions*	*Length of pre-trial preparations*	*Trial scheduled*	*Trial length*	*Current status*
Gratien Kabiligi (ICTR-97-34-I)	15 October 1997	17 February 1998	30 (with *Ntabakuze)*	Ongoing: 3 years and 4 months	First quarter of 2002	..	Pre-trial — Trial Chamber III (***Military* trial)**
Alois Ntabakuze (ICTR-97-34-I)	15 October 1997	24 October 1997	30 (with *Kabiligi*)	Ongoing: 3 years and 6 months	First quarter of 2002	..	Pre-trial — Trial Chamber III (***Military* trial)**
Tharcisse Muvunyi (ICTR-00-55-I)	2 February 2000	8 November 2000	4	Ongoing: 8 months	Date not fixed	..	Pre-trial — Trial Chamber II
Augustin Ndindiliyimana (ICTR-00-56-I)	28 January 2000	27 April 2000		Ongoing: 1 year and 2 months	Date not fixed	..	Pre-trial — (Trial Chamber III
François Xavier Nzuwonemeye (ICTR-00-56-I)	28 January 2000	25 May 2000		Ongoing: 1 year and 1 month	Date not fixed	..	Pre-trial — Trial Chamber III
Innocent Sagahutu (ICTR-00-56-I)	28 January 2000	28 November 2000		Ongoing: 7 months	Date not fixed	..	Pre-trial — Trial Chamber II
Samuel Musabyimana (ICTR-2001-62-I)	13 March 2001	2 May 2001		Ongoing: 2 months	Date not fixed	..	Pre-trial — Trial Chamber II
Simeon Nshamihigo (ICTR-2001-63-I)	23 June 2001	29 June 2001	..	..	Date not fixed	..	Pre-trial — Trial Chamber I

21. In addition to the persons whose cases are currently under pre-trial preparation, as shown in table 3, two accused, Gacumbitsi and Mpambara, were recently transferred to the Tribunal (on 20 and 21 June 2001). In total, 24 detainees are awaiting trial. The cases are in different phases of pre-trial preparations.

22. As mentioned above, there has been an increasing number of joint trials. Among the cases at the stage of pre-trial preparations there are now four such trials: the *Kibuye* trial (two accused); *Government* trial I (four accused); *Government* trial II (four accused in custody and three accused still at large); and the *Military* trial (four accused). Bearing in mind that the accused persons in the pending cases held relatively high rank and allegedly played significant roles in planning, inciting and executing the killings in Rwanda in 1994, it is also expected that their trials will last a considerable time (see para. 18). Moreover, there are 10 separate trials. With the present available resources, the accused persons from this group of cases may well spend more time in detention than the accused from the two previous groups (completed and ongoing trials).

23. The information provided above illustrates that the Trial Chambers are now working at their full capacity. Each Chamber is now twin-tracking at least two trials and other cases are in the phase of pre-trial preparations. Trial Chambers will become available, upon completion of their current roll, to commence new trials. Additionally, indictments have been confirmed in relation to 16 accused persons, but warrants for their arrest have yet to be executed. Five indictments are in the process of confirmation as at the date of the present document.

24. According to the Prosecutor's programme of future investigations, as of February 2001, eight indictments had been drafted and were being reviewed by the Office of the Prosecutor. Other investigations had advanced to the stage where draft indictments against 21 accused would be prepared soon. Investigations were ongoing in cases involving 20 more accused. In a further 35 cases, preliminary work had allowed targets to be proposed, but formal investigations had not yet been opened. In addition, there were 52 cases in which work had been suspended for the time being, but which must be completed. In total, the Office of the Prosecutor is addressing a workload involving 136 intended accused.

25. It also follows from the above-mentioned investigations programme of the Prosecutor that indictments for 29 accused will be submitted for review in 2001, 30 further indictments in 2002 and 30 more indictments in 2003. In 2004, the Prosecutor expects to indict 30 more accused as a result of investigations that are currently suspended, but which she intends to revive. The Prosecutor's expectations are that the preparation of indictments is likely to be completed by the end of 2005, by which date the Chambers will have all the indictments proposed by the Office of the Prosecutor.

26. The number and the pace of new trials that will be generated by future indictments will depend greatly on the timing of arrests. The Prosecutor's assessment is that, if there are 136 new indictees and the Tribunal continues to try several accused together, there will be an estimated 45 new trials.

27. If this estimate is accepted, the Tribunal may, along with the present workload (15 — soon 17 — accused in ongoing trials and 24 accused consecutively reaching the trial stage), expect approximately 10 new trials (30 accused) every year up to 2005, when the investigative mandate of the Prosecutor is expected to be completely discharged. The commencement of trials in these future cases depends on when the Trial Chambers complete the different phases of the present cases.

C. Projected schedule with present resources

28. It is difficult to estimate the time necessary for the Tribunal to hear current cases and to prepare and hear new cases. However, an assessment may be made on the basis of statistical data for the length of pre-trial and trial phases of the cases heard. The following factors have been taken into account:

(a) The ability of the Trial Chambers to handle several concurrent cases simultaneously (including two or three in the trial phase);

(b) The expected average length of trial of 1 year and 5 months (including the time for judgement writing). This figure includes single trials, which may be completed more quickly, as well as complicated joint trials, which may require more time;

(c) The expected average number of 10 new trials (each with at least 3 accused) every year up to 2005.

29. All of these factors must be assessed with reservation. The experience regarding average length of trial and pre-trial preparations relates mostly to the period of the Tribunal's lifespan, when there was one accused per case (single trials). The circumstances of those cases differ from the present situation with

several joint trials. For the purpose of the assessment of trial length, joint trials are considered as one case.

30. It is difficult to give clear estimates. To a large extent, the parties decide the number of witnesses to be called. Furthermore, the legal and factual questions addressed in joint trials are more complex than in single trials. More time is needed for judgement writing in a joint trial than in a single trial. Finally, on the basis of past experience, unpredictable events occur during trials and cases rarely proceed according to schedule. As mentioned above, the number of actual trial days is therefore lower than the time from the opening of the case until both parties have presented their final submissions. However, subject to these reservations, a further analysis shows that, with the available resources, the Tribunal cannot complete its roll of all present cases before the end of its third four-year mandate (2006-2007).

31. As outlined above, the Prosecutor plans to submit indictments against 136 new accused. The commencement of the first trials from this group cannot be expected until the end of the third mandate or the early stages of the fourth mandate of the Tribunal (2007-2011). Based on an estimate of three accused per trial, the Prosecutor has projected 45 new trials within the group of 136 accused. The estimates below are based on the same assumption. One of the imponderable issues is the likelihood of arrests. Faced with similar uncertainty, ICTY in its request for ad litem judges considered the additional implications of a 75 per cent and a 50 per cent success rate in arresting suspects.[5] Similar alternative assumptions in relation to the Prosecutor's programme give the following figures:

- If 75 per cent of arrests are effected, 102 accused will be added, or approximately 34 new trials;
- If 50 per cent of arrests are effected, 68 accused will be added, or approximately 23 new trials.

32. In calculating the length of time that the Tribunal will need to complete these cases, it is assumed that each Trial Chamber will maintain its current capacity to handle two or three trials concurrently (depending on their complexity) in addition to pre-trial preparations. This implies that there will be trials against six to nine accused before each Chamber at any one time. Bearing in mind the varying complexity of the cases, it is realistic to assume that the total capacity of the Tribunal cannot exceed trials against more than 18 to 21 accused at any one time. In the case of an arrest rate of 50 per cent (68 accused), the Tribunal will need two new mandates after 2007 to complete its task, i.e. until 2015. Should 75 per cent of these indicted be arrested (102 persons), a further four-year mandate will be required (2015-2019). In the event of 100 per cent arrests, the task of the Trial Chambers will extend to 2023. For the reasons given in paragraph 22 of the main body of the report, such time frames are not acceptable and must be avoided.

33. In the ICTY request for ad litem judges, it was estimated that the current cases might end in the first instance by the middle of 2003. Trials of accused at large might be completed by the end of 2007, whereas trials of new cases might be brought to finality by the end of 2016. This led to the conclusion that at the minimum four additional four-year mandates would be required for ICTY to accomplish its mission without ad litem judges. In the case of a greater number of

[5] ICTY report, para. 37.

indictments, the ICTY request stated that this time frame might well be greatly increased. On the other hand, accepting the estimates of arrest with a ratio of 75 per cent or 50 per cent arrests, another 10 or 6 years would be necessary to complete the ICTY mission.[6]

34. It is worth noting that the ICTR estimates are similar to the ICTY predictions. To the extent that ICTY considers that its task may be completed earlier than at the ICTR, it is important to note, first, that the a higher number of accused persons have been arrested in the case of ICTR than ICTY.[7] Secondly, the Prosecutor's investigation programme in relation to the ICTR includes a higher number of suspects than the figures indicated to ICTY. It is also important to recall that all the detainees in Arusha are alleged to have been leaders during the events in Rwanda in 1994. As mentioned above (para. 18), such cases are more complicated, legally and factually, than trials against accused at a lower level of alleged involvement.

D. Projected schedule with ad litem judges

35. The strengthening of ICTR by up to nine ad litem judges and the implementation of the working procedures outlined in chapter I of the main body of the report (paras. 23-29) would have the potential to approximately double the trial capacity of the Tribunal. The addition of three further sections within the three existing Trial Chambers would allow the Tribunal to manage up to approximately 12 trials in progress and 12 to 18 trials in preparation.

36. Based on the same assumptions as above (paras. 28-34) the proposed reform would enable the Tribunal to complete its work a great deal sooner. ICTR would then have the potential to try up to 36 accused at any one time on a multi-track basis. Assuming that the proposal were implemented in full by the end of 2002, and if there were seven trials then in progress, the trial capacity of the Tribunal would at that point increase by up to six further cases or a total of 13 concurrent trials. This would make it possible to start most of the present cases on the Tribunal's roll by the end of the current mandate.

37. If nearly all the cases presently on the Tribunal's roll could be completed approximately by the end of 2004, the new cases would be ready to start earlier. If indictees were arrested, 50 per cent of the extra 23 trials would be completed early in the fourth mandate (about 2008). An arrest rate of 75 per cent would imply the end of trials in the first instance by 2009, whereas the arrest of all new 136 persons would require that the Trial Chambers continue with trials until the end of that mandate (2011).

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[6] Ibid.

[7] The number of persons detained by ICTY in May 2000 was 36, whereas the present number of detainees in Arusha is 48.